



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

Bulletin L-14

February 15, 2005

To: ALL INSURERS LICENSED IN THE STATE OF CONNECTICUT

Re: LICENSING REQUIREMENTS APPLICABLE TO ADJUSTERS WHO HANDLE SUBROGATION CLAIMS.

It has recently been brought to the attention of the Insurance Department that there may exist some confusion among insurance companies and among professionals engaged in the adjusting of subrogation claims and/or in the gathering of information necessary to the resolution of underlying insurance claims about the licensing requirements applicable to individuals who perform such activities on behalf of an insurer. The purpose of this Bulletin is to (1) address the Insurance Department's position with regard to the current state of the law concerning individuals engaged in the adjusting of subrogation claims; and (2) provide more explicit guidance as to the particular activities that, when engaged in by individuals not otherwise exempted who interview, take statements under oath or gather information used by an insurer as the basis for evaluating, and ultimately settling, an insurance claim, are considered determinative that such individuals are acting as adjusters on behalf of the insurer and, consequently, must be duly licensed pursuant to Connecticut General Statutes §§ 38a-769 and 38a-792.

Persons Performing Subrogation Services for an Insurer

Subrogation may be defined as an equitable doctrine whereby a person who fulfills the obligations of another because of a legal responsibility also assumes all the rights relating to such obligation that the other possesses. As it relates to insurance transactions, subrogation means that an insurer that has paid the amount of a loss to an insured person becomes subrogated in a corresponding amount to the insured's right of action against the person responsible for the loss. See, e.g., Westchester Fire Insurance Co. v. Allstate Insurance Co., 236 Conn. 362, 672 A.2d 939 (1996). Through the process of subrogation an insurer seeks to recover from responsible third parties the amount of a claim that the insurer is obligated to pay to a claimant under the terms of an insurance contract. Having received payment for a claim, a claimant assigns to the insurer any rights of recovery against third party tortfeasors with regard to the claim. The insurer, in turn, hires or employs individuals (hereinafter "Adjusters") who pursue recovery of all or part of the claim on behalf of the insurer against such tortfeasors. A key function of the Adjusters is to engage in negotiations with the responsible third parties, or with the third parties' insurers, to arrive at a final determination about liability and at a resolution about the amount of the claim. In addition, the Adjusters become involved in handling and negotiating claims when subrogation demands are made against their own insureds by third party claimants.

Under Connecticut law, specifically section 38a-792 of the Connecticut General Statutes, no person may act as an adjuster of casualty claims unless licensed as such. Additionally, section 38a-792-1 of the Regulations of Connecticut State Agencies further clarifies that "[a]djusters of casualty claims requiring a license . . . shall include the following: (a) All adjusters who settle personal injury or death claims *arising out of* automobile accidents; (b) all adjusters settling claims *arising out of* premises/operations liability insurance policies; (c) all adjusters handling claims *arising under* the workers' compensation law . . . (d) all adjusters handling property damage claims, including automobile collision losses; (e) all adjusters handling personal injury or death cases *arising out of* the violation of any common law or statutory duty not included in the above classes." (Emphasis added.) In general terms, the language of the referenced provisions makes it reasonably clear that any and all individuals who handle, adjust and/or settle claims asserted pursuant to obligations arising under contractual provisions contained in a policy of insurance must be licensed as adjusters. While it is certainly true that the right inherent in the subrogation process flows from certain equitable principles that require a loss to be borne by the person or individual who caused it, it is likewise true that, when such right accrues because of payments made under and because of an insurance contract, the final claim by an insurer subrogated to the rights of its insured, although indirectly, is nonetheless a claim "arising out of a policy of insurance" within the meaning of the applicable statutes and related regulations.

Moreover, given that insurance premiums are to a certain extent a function of the insured's loss experience and that the main purpose of the work performed by the Adjusters is to arrive at a final determination as to the amount of a claim by or against an insured, the insured's premium rates could easily be impacted as a result of such determination. In order to avoid diminishing or compromising the protection to which Connecticut insureds are entitled, it is therefore necessary for individuals who engage in insurance activities that affect the public, including Adjusters, to be knowledgeable and duly qualified in their field and also versed in Connecticut laws and regulations. In this respect licensure serves to provide a certain measure of protection for the insurance buying public by ensuring that those performing certain functions have provided adequate proof of possessing at least the minimum qualifications necessary for the performance of such functions. Therefore, public policy dictates that entities and individuals engaged in the negotiation and settlement of claims in the subrogation process, because they perform adjusting functions that have an effect on the insurance buying public, are required to be duly licensed as casualty adjusters.

Any failure to comply with this bulletin is considered a violation and may result in administrative action against the unlicensed individual as well as the insurer that she or he represents.


Susan F. Cogswell
Insurance Commissioner